REMARKS

Claims 1 through 11, 14 through 18, and 20 through 25 are pending in this Application. Claim 13 has been canceled without prejudice or disclaimer. Claims 1 through 11, 14 through 18, and 20 through 23 have been amended, and new claims 24 and 25 have been added. Care has been exercised to avoid the introduction of new matter. Adequate descriptive support for the present Amendment should be apparent throughout the originally filed disclosure as, for example, the Abstract, FIG. 1, ¶¶ [0006], [0013], [0017], [0024], [0025], [0044], and [0073] of the corresponding US Pub. No. 20070265097. Applicant submits that the present Amendment does not generate any new matter issue.

Personal Interview of May 19, 2010.

Applicant expresses appreciation for the courtesy of the Examiner and his supervisor in granting and conducting a personal interview on May 19, 2010. No agreement was reached.

Claims 1 through 11, 13 through 18, and 20 through 23 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

In the statement of the rejection, the Examiner asserted it is not clear how analysis on the music signal is performed in response to actual game data in claims 1, 11, 13, and 15, and how a threshold value and limits for game control parameters are determined by analyzing the musical signal in claim 3 and 4. This rejection is traversed.

Applicant does not agree that one have ordinary skill in the art would have any difficulty ascertaining the scope of the claimed invention, particularly when interpreted in light of and consistent with the specification. At any rate, to expedite prosecution, the claims have been clarified by addressing the issues raised by the Examiner, thereby overcoming the stated bases

for the rejection. Applicant therefore solicits withdrawal of the rejection of claims 1 through 11, 13 through 18, and 20 through 23 under the second paragraph of 35 U.S.C. §112.

Claims 1 through 11, 13 through 18, 20, and 21 were rejected under 35 U.S.C. §102(b) as being anticipated by *Bolas at al.* (US 5513129, "*Bolas*").

In stating the rejection, the Examiner asserted that *Bolas* discloses a method, apparatus, and computer readable storage medium identically corresponding to those claimed. Applicant respectfully traverses this rejection.

The factual determination of lack of novelty under 35 U.S.C. §102(b) requires the identical disclosure in a single reference of each element of a claimed invention, as those elements are set forth in the claims, such that the claimed invention is placed into the recognized possession of one having ordinary skill in the art. *Praxair, Inc. v. ATMI, Inc.*, 543 F.3d 1308, (Fed. Cir. 2008); *Dayco Prods., Inc. v. Total Containment, Inc.*, 329 F.3d 1358 (Fed. Cir. 2003); *Crown Operations International Ltd. v. Solutia Inc.*, 289 F.3d 1367 (Fed. Cir. 2002); *Candt Tech Ltd. v. Resco Metal & Plastics Corp.*, 264 F.3d 1344 (Fed. Cir. 2001). Moreover, when imposing a rejection under 35 U.S.C. §102 for lack of novelty, the Examiner is required to specifically identify where in the applied reference disclosed each and every feature of the claimed invention, particularly when such is not apparent as in the present case. *In re Rijckaert, 9 F.3d 1531 (Fed. Cir. 1993); Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452 (Fed. Cir. 1984).* Indeed, there are fundamental differences between the claimed method, apparatus, computer readable storage medium and those disclosed by *Bolas* that scotch the factual determination that *Bolas* discloses, or even remotely suggests, a method, apparatus, and computer readable storage medium identically corresponding to those claimed.

Independent claims 1, 11, and 15 recite, *inter alia*: "executing an electronic game; causing, at least in part, actions result in reception of actual user gaming interaction data occurring in the game and context data including at least one of a music signal and an image signal, analyzing the at least one of the music and image signals, **generating electronic game control data on the basis of the actual user gaming interaction data and the analysis of the at least one of the music and image signals**, and **continuing executing the game according to the generated game control data**." The above stressed feature is neither disclosed nor suggested by *Bolas*.

Bolas creates, destroys, moves, or modifies virtual objects (e.g., clapping hands, dancing dancers, etc) based upon control signals generated from music. For example, *Bolas* populates the virtual environment with animated virtual objects which move in response to the music (col. 4, lines 25 through 33). *Bolas* only expresses highly refined qualities of music in a virtual environment" (col. 12, lines 11 through 16), but not to "generate electronic game control data on the basis of the **actual user gaming interaction data** and the analysis of the at least one of the music and image signals." *Bolas* is silent with respect to user interaction with the animated virtual objects (e.g., clapping hands, dancing dancers, etc), let alone "generating electronic game control data on the basis of the **actual user interaction with the he animated virtual objects** and the analysis of the at least one of the music and image signals."

The above-argued fundamental and functionally significant differences between the claimed method, apparatus, and computer readable storage medium and those disclosed by *Bolas* undermine the factual determination that *Bolas* discloses a method, apparatus, and computer readable storage medium identically corresponding to those, claimed, as required under 35 U.S.C. §102(b). *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc.*, 976 F.2d 1559 (Fed. Cir. 1992); *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565

(Fed. Cir. 1986). Applicant, therefore, submits that the imposed rejection of claims 1 through 11, 13 through 18, 20, and 21 under 35 U.S.C. §102(b) for lack of novelty based on *Bolas* is not factually viable, and hence, solicits withdrawal thereof.

***Hall-Tipping* (US 5001632)**

Hall-Tipping was previously cited. However, this reference was brought up again by the Examiner during the personal interview, potentially in the context of a rejection under 35 U.S.C. §103 combined with *Bolas*. To expedite prosecution, Applicant will address this potential rejection by pointing out that *Hall-Tipping* only adjusts a difficulty level of a video game (e.g., Pac-man) based upon a player's aerobic activity level during exercise (e.g., exercise bicycle), but not based upon "the actual user gaming interaction data (e.g., Pac-man scores, user interaction within the Pac-man game, etc.)". Accordingly, even if *Bolas* and *Hall-Tipping* were combined as proposed by the Examiner during the personal interview, and Applicant does not agree that the requisite basis for the asserted motivation has been established, the claimed inventions would not result. *See Uniroyal, Inc. v. Rudkin-Wiley Corp.,* 837 F.2d 1044 (Fed. Cir.1988). Applicant therefore submits that claims 1 through 11, 13 through 18, 20, and 21 are not vulnerable to a rejection under 35 U.S.C. 103 for obviousness based *Bolas* in view of *Hall-Tipping*.

Claims 22 and 23 were rejected as obvious under 35 U.S.C. §103(a) based on *Bolas* in view of *Nagata et al.* (US 20020016203, "*Nagata*").

The rejection is traversed.

Specifically, Claims 22 and 23 depend from independent claim 15. Applicant incorporates herein the arguments previously advanced in traversing the imposed rejection of independent claim 15 under 35 U.S.C. §102(b) for anticipation predicated upon *Bolas*.

The additional reference to *Nagata* does not cure the previously argued deficiencies in *Bolas*. Accordingly, even if the applied references were combined as proposed by the Examiner, and again Applicant does not agree that the requisite fact-based motivation has been established, the claimed inventions would not result. *See Uniroyal, Inc. v. Rudkin-Wiley Corp., supra.* Applicant therefore submits that the imposed rejection of claims 22 and 23 under 35 U.S.C. 103(a) for obviousness predicated upon *Bolas* in view of *Nagata* is not factually or legally viable and, hence, solicits withdrawal thereof.

Based upon the foregoing, it is apparent that the imposed rejections have been overcome, and that all pending claims are in condition for allowance. Favorable consideration is therefore solicited. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at 703-822-7186 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 C.F.R. §1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

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Date

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